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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,818	12/06/2001	Mary Carmen Gasco	8363M	7279

27752 7590 05/05/2004

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 05/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/010,818	Applicant(s) GASCO ET AL.	
	Examiner Stephen J. Castellano	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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In view of the Brief filed on February 23, 2004, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

The drawings are objected to because Figures 9 is an elevation view showing the chip. If Fig. 9 is a section view then state this in the drawing description and show a broken-section view as was done in Fig. 8 and insert appropriate cross hatching. If, however, Fig. 9 is an elevation view and is not a section view, do not use solid lines to represent it. Use dotted lines indicating that the chip is hidden from view.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1, 3-5 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Beall ('510) and Beall ('485).

The Beall references disclose a shaped container bottom integral to a container in combination with curved snack pieces therein, the snack pieces comprise a center radius, a center height, a peripheral edge and a lower surface, the snack pieces are located within a container, the container bottom comprising a bottom panel having a center radius (that radius associated with the flat central portion of the bottom panel), a center height (the height associated with the flat central portion of the bottom panel), and a concave-curvature about a first axis (horizontal axis that is perpendicular to the upper or lower surface of one of the chips) of the bottom panel (the concavity is formed by the upper surface of the annular trough surrounding the flat central portion), wherein the concave-curvature substantially conforms to the curvature of the snack pieces and at least a portion of the peripheral edge of a lowest snack piece rests upon the bottom panel.

Re claim 2, the concave-curvature is downwardly curved as one progresses from the outer or inner edges of the annular trough toward the center of the trough.

Re claim 5, the curvature of the bottom panel conforms to the curvature of the plurality of snack pieces.

Re claim 10, the bottom panel has a second upwardly concave-curvature (the trough is upwardly curved as one progresses from the center of the annular trough toward the outer or inner edges of the trough) about a second axis (a horizontal axis similar to the first axis, yet perpendicular to the upper or lower surface of a second chip that is located at a diametrically opposed position to the first chip that forms the first axis) of the bottom panel.

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Claims 1 and 3-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Baur et al. (Baur).

Baur discloses a package (10) defining a shaped container bottom (end closure 12) for containing a plurality of curved snack pieces (15), each snack piece having a peripheral edge and a lower surface, within the container, the container bottom comprising a bottom panel (end closure 12) comprising at least two base portions (portions of the edges of end closure 12) and a bottom panel center (that portion inside of the edges) disposed between the base portions, the bottom panel center having a concave curvature (the inner surfaces of the inner and outer walls of the U-shaped bead on end closure 12, the upper end closure 13 being shown in Fig. 1 and in cross section by Fig. 4, the structure of the lower end closure would be similar) about a first axis (longitudinal center axis of package 10) of the container, wherein the concave curvature of the bottom panel substantially conforms to the curvature of the snack pieces (the concave inner surface of the outer wall of the U-shaped bead on the end closure conforms to the oval or circular shape of the edges of the snack piece as viewed in plan when the snack piece is inserted within the container) and at least a portion (lowermost portions) of the peripheral edge of a lowest snack piece of the plurality of snack pieces rests upon the base portions of the bottom panel.

Claims 1, 3 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Ruiz.

Ruiz discloses an edible shell or bowl defining a shaped container bottom, a plurality of bowls are packaged in a stacked array, the lowest bowl in the stack defines the shaped bottom and holds curved snack pieces defined by the other bowls in the stack placed within the lowest bowl. Each snack piece having a peripheral edge (defined by outermost concentric bead 24) and a lower surface (defined by that portion of bottom 22 inside of the peripheral edge and the

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outermost concentric bead), within a container, the container bottom comprising a bottom panel (22) having a concave curvature about a first axis (the longitudinal center axis of the container bottom) of the bottom panel, wherein the concave curvature of the bottom panel substantially conforms to the curvature of the snack pieces and at least a portion of the peripheral edge of a lowest snack piece of the plurality of snack pieces rests upon the bottom panel.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beall ('510) and Beall ('485).

The Beall references disclose the invention except for the dimensional limitations. The saddle height of the snack chip being greater than the center height of the bottom panel is obvious to provide snacks with greater curvature while maintaining the surface area of the upper and lower surfaces in order to provide chips that are more stable when stacked. As the saddle height increases, the force and distance needed to disengage adjacent chips must increase. It would have been obvious to provide a saddle height that is greater than the center height of the bottom panel by 0.5 to 30 mm as motivated by stability. The center height of the bottom panel can be optimized as a balance between the conservation of container material as a lower height will save material while a greater height provides better chip retention by limiting movement towards the center of the container. It would have been obvious to provide a center height of the bottom panel of between 2-40 mm as motivated by an optimized design. It would have been

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obvious to limit the center radius of the bottom panel to be not more than 60 mm and from about 15 to 35 mm to conserve material as a design with 60 mm or greater would result in more container material and 15-35 mm results in a greater conservation of material. This conservation of material both reduces costs of material and environmental impact.

Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baur et al. (Baur) in view of Griffith.


Baur discloses the invention except for the bottom panel substantially conforming to the curvature of the snack pieces. Griffith teaches a shaped container bottom formed by cushioning member 18 that conforms to the curvature of the snack pieces (see column 2, lines 61-66). It would have been obvious to modify the bottom of Baur to conform to the shape of the snack pieces in order to support the piece such that movement is restricted and the stack of chips remains in a stable position centered within the container as motivated by less damage to the chips because the chips are moving less and the impact if any exist is minimized.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

----- If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. -----

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc